

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
CARDWELL, MISSOURI)
)
A Municipality)
)
Proceeding under Section 309(a)(3))
Of the Clean Water Act,)
33 U.S.C. §1319(a)(3))
)

FINDINGS OF VIOLATION AND
ORDER FOR COMPLIANCE

Docket No. CWA-07-2010-0039

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and ORDER is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a)(3) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

2. The City of Cardwell, Missouri (hereafter "Respondent" or "City") owns and operates a publicly owned treatment works ("POTW") that treats domestic, commercial, and industrial wastewater.

3. The Missouri Department of Natural Resources ("MDNR") is the agency within the state of Missouri that has been authorized to administer the federal National Pollutant Discharge Elimination System ("NPDES") program pursuant to Section 402 of the CWA and its implementing regulations. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

II. Jurisdiction and Findings of Violation

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, permits issued under the authority of Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

5. The City is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. The City owns and operates a POTW that receives and treats wastewater from various domestic and commercial and/or industrial sources.

7. The City's POTW is a "point source" that "discharges pollutants" into "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Respondent's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

9. On July 9, 2004, MDNR issued to the City NPDES Permit No. MO-0055824 (hereafter "NPDES permit") for discharges from its POTW to an unnamed tributary to Kinnemore Ditch. The NPDES permit expired on July 8, 2009. On September 4, 2009, MDNR issued to the City a renewal permit, which will expire on September 3, 2014.

10. The City's NPDES permit requires Respondent to apply for a renewal permit within 180 days of the expiration of its existing permit. The deadline for Respondent's application for a renewal permit was on January 8, 2009. Respondent submitted an application for a renewal permit to MDNR on March 30, 2009.

11. The City's NPDES permit establishes effluent limitations for Total Suspended Solids ("TSS"), Biochemical Oxygen Demand ("BOD") and pH for Outfall 001. The NPDES permit sets monthly average limitations for TSS at 80 milligrams per Liter ("mg/L"). The NPDES permit sets monthly average limitations for BOD at 45 mg/L. The NPDES permit limits the range for pH units between 6.0 and 9.0 pH units.

12. The City's NPDES permit requires Respondent to file Discharge Monitoring Reports ("DMRs") with MDNR on a monthly basis that summarize Respondent's sampling and analysis results for all pollutants regulated by the NPDES permit. Additionally, the City's NPDES permit requires Respondent to retain records of all monitoring information for a period of at least three years.

13. The City's NPDES permit requires Respondent to operate and maintain its facilities to comply with the Missouri Clean Water Law and applicable permit conditions.

14. The City's NPDES permit requires Respondent to test pollutants in accordance with the Missouri Clean Water Commission Effluent Regulation 10 CSR 20-7015. According to the regulations, the holding time for pH samples shall not exceed 15 minutes before analysis of the sample.

15. On March 26, 2009, an EPA representative performed an inspection of Respondent's wastewater treatment facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). Included in the inspection was observation of the City's POTW. The inspection revealed the following:

- a. Respondent had not applied for a renewal NPDES permit within 180 days of the expiration of its July 9, 2004, permit.

b. Respondent had not submitted DMRs to MDNR for six months in 2006 nor had Respondent retained DMRs for the same months at its POTW.

c. The inside berms of the Respondent's POTW lagoons showed severe erosion. Additionally, the lagoons appeared to hold a large population of turtles, which may compromise the integrity of the berm structures.

d. Within the past five years, the City has exceeded its monthly average NPDES permit limitations for TSS, BOD and pH, as follows:

Table 1: TSS Monthly Violations

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedence
June 2006	80 mg/L	427 mg/L	433%
July 2006	80 mg/L	310 mg/L	287%
August 2006	80 mg/L	223 mg/L	178%
January 2007	80 mg/L	94 mg/L	17%
February 2007	80 mg/L	140 mg/L	75%
March 2007	80 mg/L	143 mg/L	78%
April 2007	80 mg/L	275 mg/L	243%
May 2007	80 mg/L	84 mg/L	5%
September 2007	80 mg/L	130 mg/L	62%
October 2007	80 mg/L	87 mg/L	8%
November 2007	80 mg/L	134 mg/L	67%
December 2007	80 mg/L	88 mg/L	10%
February 2008	80 mg/L	160 mg/L	100%
March 2008	80 mg/L	144 mg/L	80%
April 2008	80 mg/L	120 mg/L	50%
May 2008	80 mg/L	174 mg/L	117%
October 2008	80 mg/L	136 mg/L	70%
November 2008	80 mg/L	160 mg/L	100%
December 2008	80 mg/L	100 mg/L	25%
February 2009	80 mg/L	129 mg/L	61%
April 2009	80 mg/L	145 mg/L	81%

Table 2: BOD Violations

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedence
June 2006	45 mg/L	99 mg/L	120%
July 2006	45 mg/L	101 mg/L	124%
August 2006	45 mg/L	90 mg/L	100%
April 2007	45 mg/L	53 mg/L	17%
May 2007	45 mg/L	53 mg/L	17%
January 2008	45 mg/L	55.4 mg/L	23%
November 2008	45 mg/L	53.0 mg/L	17%
February 2009	45 mg/L	52.6 mg/L	16%

Table 3: pH Violations

Date of Violation	Effluent Limit	Reported Effluent Limit	Percent Exceedence
June 2006	6-9	9.81	9%
July 2006	6-9	9.25	3%
January 2007	6-9	9.44	5%
February 2007	6-9	9.41	4%
March 2007	6-9	9.42	5%
April 2007	6-9	9.98	10%
September 2007	6-9	9.81	10%
October 2007	6-9	9.09	1%
February 2008	6-9	9.72	7%
March 2008	6-9	9.88	9%
April 2008	6-9	9.28	3%
October 2008	6-9	9.12	1%
November 2008	6-9	9.53	5%
February	6-9	9.35	4%

e. Within the past five years, the City has experienced discharges of untreated wastewater from the City's wastewater collection system, also know as sanitary sewer overflows ("SSOs").

f. Respondent's monitoring reports indicated that Respondent's pH samples were held longer than 15 minutes before they were analyzed.

16. The violations identified in paragraph 15 are violations of the terms and conditions of the NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the City, and as such, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. Order For Compliance

17. Based on the Findings set forth above, and pursuant 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED as follows:

18. Respondent shall immediately comply with its NPDES permit and the CWA.

19. Within 30 days of receipt of this Order, the City shall submit to EPA an Interim Work Plan. The plan should include, at a minimum, (1) the City's plans to immediately eliminate effluent violations; (2) the City's plans to immediately ensure the integrity of the lagoon berms; and (3) the City's plans to immediately comply with the sampling, monitoring and reporting requirements of its NPDES permit.

20. *Approval of Work Plan Submission to EPA.*

- a. Upon EPA approval of the Interim Work Plan described in paragraph 19, it shall be incorporated by reference and fully enforceable under the terms of this Order for Compliance, and implemented according to the schedule set forth in the Work Plan.
- c. If EPA does not approve the Work Plan, Respondent shall address the comments and resubmit the Work Plan for review within thirty days of receipt of EPA's disapproval.
- d. Upon resubmission, EPA, in its sole discretion, may either approve the Work Plan, or if EPA determines that the Work Plan does not adequately address the comments provided by EPA, EPA may unilaterally modify the Work Plan and will provide Respondent with a copy of the Work Plan as modified. Respondent shall implement the modified Work Plan according to the schedule contained therein.

21. The City shall implement and comply with the terms set forth in the "Sanitary Sewer System Plan" submitted to EPA on March 1, 2010 (Attachment A) and the "Interim Engineering Report for City of Cardwell Wastewater Treatment Facility" (Attachment B) submitted to EPA in October 2009. Pursuant to these plans, the City shall:

- a. Immediately implement the Inflow and Infiltration Reduction Plan set forth in the "Sanitary Sewer System Plan." This includes completion of at least one wet weather and one dry weather inspection of each manhole in 2010, a smoke test of the entire sewer system in 2010, and an inspection of the lift station in 2010, as set forth in the plan.
- b. Immediately implement the Inspection and Maintenance Plan set forth in the "Sanitary Sewer System Plan;"
- c. Immediately implement the Sanitary Sewer Overflow Reporting Plan set forth in the "Sanitary Sewer System Plan;"
- d. Immediately implement the interim measures set forth in the "Interim Engineering Report for City of Cardwell Wastewater Treatment Facility" to deal with the excessive algae growth and sludge buildup identified in the report; and
- e. Complete construction for the Wastewater Treatment Facility upgrade by May 2012, as set forth in the "Interim Engineering Report for City of Cardwell Wastewater Treatment Facility."

Submissions

22. All documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Berla Johnson
Water Enforcement Branch
U.S. Environmental Protection Agency-Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

23. All documents required to be submitted to MDNR by this Order shall be submitted by mail to:

Gary Gaines
Director
Missouri Department of Natural Resources
2155 North Westwood Boulevard
Poplar Bluff, Missouri 63901.

Certification

24. All submissions made by Respondent to EPA and MDNR pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described at 40 CFR § 122.2:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing submissions of false information.

IV. General Provisions

Effect of Compliance with the terms of this Order

25. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

26. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

27. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

28. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

29. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein comply with the terms of this Order.

Effective Date

30. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

Termination

31. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 6th day of April, 2010.



William A. Spratlin

Director

Water, Wetlands and Pesticides Division



Chris Muehlberger

Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I sent a copy the foregoing Findings of Violation and Order by first class certified mail, return receipt requested, to:

The Honorable Johnny L. Price
Mayor
City of Cardwell
119 East Loeb
P.O. Box 216
Cardwell, Missouri 63829

Kevin Mohammadi
Chief
Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
1101 Riverside Drive
Jefferson City, Missouri 65101

Gary Gaines
Director
Missouri Department of Natural Resources
2155 North Westwood Boulevard
Poplar Bluff, Missouri 63901.

4/6/10
Date

Carl M. [Signature]